IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7901 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAKESH ALIAS MUNNO ANILSINH PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UR BHATT AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/10/2000

ORAL JUDGEMENT

The petitioner detenu has, by filing this writ petition under Art.226 of the Constitution of India, challenged the legality and validity of order of detention dt. 3/5/2000 Annexure : A passed by Respondent No.2 which he has passed in exercise of powers conferred upon him under Sec.3(2) of the Gujarat

Prevention of Antisocial Activities Act, 1985 (for short "the Act").

2. As per the papers of grounds of detention, it is the case of the detaining authority that petitioner detenu is a "dangerous person " within the meaning of Sec.2(c) of the Act and that his activities are prejudicial to the maintenance of public order. Before passing an order of detention, for arriving at his subjective satisfaction, the detaining authority placed reliance on two criminal cases for offences punishable under Indian Penal Code and other material which are referred to in grounds of detention. The detaining authority also placed reliance on statements of five anonymous witnesses whose identity has not been disclosed by claiming privilege under Sec.9(2) of the Act. As per the papers, the detaining authority verified the statements of five witnesses on 8th March, 2000 and passed an order of detention on 3rd May, 2000 which is challenged in this writ petition.

3. Though Rule has been served upon each respondent,the respondents have not filed affidavit-in-reply in reply to the Writ Petition by controverting the grounds mentioned in Memo thereof.

4. Ms.K.U.Mishra, the learned advocate for the petitioner has argued that the detaining authority has placed reliance on two I.P.C. cases, out of which last case registered is case of CR.No. I 67/2000 registered in Surendranagar City Police Station on 23rd February, 2000 and thereafter, order of detention came to be passed by respondent no.2 on 3/5/2000. She has argued that delay for the period from 23/2/2000 to 2/5/2000 has not been explained by the detaining authority, and thus, order is vitiated on the ground of absence of explanation for inordinate delay in passing order of detention, though last case was registered on 23/2/2000. She has cited an authority of EILESH NANDUBHAI PATEL Vs.C.P.SING, COMMISSIONER OF POLICE, AHMEDABAD CITY AND OTHERS, reported in 1997(2) G.L.R. 1375 wherein it has been held that unexplained delay makes a ground of detention not proximate vitiating the order of detention itself. In view of this, the order which is challenged in this writ petition is also vitiated by unexplained delay and therefore, it requires to be quashed and set aside.

5. In view of what is stated hereinabove, this writ petition is allowed. The order of detention dt. 3.5.200

passed by Respondent no. 2 which is at Annexure: A is quashed and set aside. The petitioner detenu is ordered to be released forth with, if he is not required to be detained further for any criminal case or proceedings. Rule is made absolute accordingly. Direct Service is permitted.

Date: 05/10/2000. (H.H.MEHTA,J.)
ccshah